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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for Nondominant Common Carriers	)	CC Docket No. 93-36

REPLY COMMENTS

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SUMMARY

In these Reply Comments, BellSouth reiterates that the Commission should tailor its policies and rules regarding streamlined tariff filing requirements based upon the competitive nature of each service offering at issue rather than based upon the dominant or non-dominant status of the carriers involved. As Ameritech has suggested, the Commission should permit the special access and switched transport services of local exchange carriers the benefit of streamlined requirements once expanded interconnection arrangements are available.

Secondly, the Commission need not revise its proposed rules in this proceeding with a view toward accommodating the concerns of user customers regarding the precedence which tariff filings can have over long-term service arrangements. The appropriate resolution of such concerns should rest within the marketplace, as adverse effects could be expected for competitors which attempt to modify such arrangements unilaterally.

Thirdly, the Commission need not address in this proceeding the extent to which carriers are permitted to cross-reference tariffs of other carriers. The rules already prohibit such cross-referencing, with waivers permitted only upon a showing of good cause.

Finally, the Commission is not prohibited by the Communications Act from permitting carriers to file tariffs which include a range of rates, although the Commission's

policies and rules in that regard must be properly tailored and implemented to assure that the policies underlying the Communications Act are met.

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REPLY COMMENTS

BellSouth Telecommunications, Inc., ("BellSouth") hereby files its Reply Comments in the above-captioned rulemaking proceeding. In this proceeding, the Commission is proposing to adopt streamlined tariff filing requirements for non-dominant carriers.[1] Forty-two parties filed Comments.

I. THE APPLICATION OF STREAMLINED TARIFF FILING REQUIREMENTS SHOULD BE BASED UPON THE COMPETITIVE NATURE OF THE SERVICE AT ISSUE

In its Comments, filed March 29, 1993, BellSouth urged 1the Commission to apply streamlined tariff filing requirements not based upon the dominant/non-dominant status of the carrier involved, as the Commission proposes, but rather to apply such requirements to dominant as well as non-dominant carriers, based upon the competitive nature of the service offering at issue. Several commenters also urge the Commission not to limit streamlined tariffing to non-dominant carriers, but to apply such policies to all providers, in particular to local exchange carriers

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[1] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Notice of Proposed Rulemaking (FCC 93-103), released February 19, 1993 ("Order").

("LECs"), where the service offering at issue is a competitive one.[2] BellSouth urges the Commission to adopt this view.

As Ameritech states,[3] where services are competitive, the existence of competition can even more effectively

applied to the switched access transport[6] services of LECs with the availability of switched access expanded interconnection, which the Commission has proposed should take effect by November 1, 1993.[7]

The Commission, of course, has already determined that streamlined tariff filing requirements are applicable to most business services of AT&T based upon a competitive market analysis.[8] The Commission should also recognize that at least some access services, in particular special access and switched access transport, will be sufficiently competitive with the advent of expanded interconnection arrangements to merit streamlined treatment. Such a determination need not await a reduction in LECs' market share of such services, as was the case for AT&T with respect to the interexchange business services market. Competitive forces with respect to these access services have developed in a manner quite different than occurred in

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[6] The term "transport," when used herein, refers to both entrance facilities and local channel portions of switched and special access services, respectively, as well as interoffice portions.

[7] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141 Phases I & II, 7 FCC Rcd 7740 (1992) ("Switched Access Interconnection Order"), para. 37; Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006 (1992) ("Transport Rate Structure and Pricing Order"), para. 162.

[8] See Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991).

the interexchange marketplace. With the availability of expanded interconnection arrangements, economical alternatives to LECs' transport services will be easily obtainable, and this will have a significant impact on the marketplace and the LECs' role in it - whether or not demand for LECs' offerings declines substantially in fact. The Commission's analysis must take this into consideration.

Competitive inroads into AT&T's domination of the interexchange marketplace were deterred by various barriers which are simply not present in the exchange access arena. For instance, although alternative interexchange common carriers were authorized to compete with AT&T's interexchange carrier services as early as 1971,[9] the authorization was initially interpreted to apply only for private line services[10] with the dominant carrier required to provide interconnection to its facilities only at the local exchange end points,[11] and resale was restricted to

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[9] Specialized Common Carrier Services, 29 F.C.C.2d 870 (1971), aff'd sub nom. Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975), cert. denied 423 U.S. 836 (1975). The offering by private carriers of specialized service by means of microwave facilities had been authorized as early as 1960. See Allocation of Microwave Frequencies above 890 Mc., 27 F.C.C. 359 (1959), 29 F.C.C. 825 (1960).

[10] See discussion of Commission's determinations regarding MCI's Execunet service in MCI Telecommunications Corp. v. F.C.C., 561 F.2d 365 (D.C. Cir. 1977), cert. den. 434 U.S. 1040 (1978), 580 F.2d 590 (D.C. Cir. 1978) cert. den. 439 U.S. 980.

[11] Specialized Common Carrier Services, supra at para. 157.

private line services.[12] This requirement that alternative providers establish what was, in essence, duplicate networks imposed a substantial financial and practical deterrent to the development of competition to AT&T. Even much later when AT&T was required to permit interexchange carriers to resell public switched services of AT&T,[13] barriers to competitive growth remained and have continued to exist. For instance, AT&T has not been required to unbundle its network nor has it been required to permit competitors to interconnect directly with AT&T's own switching systems.

In contrast, competition in the exchange access arena is proceeding at a much more rapid pace, and regulatory interconnection requirements have been much more intrusive. With the combined effect of the Commission's local transport restructure requirements,[14] special access expanded interconnection requirements,[15] and switched access interconnection proposals,[16] access competitors have minimal

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[12] Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261 (1976), paras. 53-55, amended on reconsideration, 62 F.C.C.2d 588 (1977), aff'd AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978).

[13] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, CC Docket 80-54, 83 F.C.C. 2d 167 (1980).

[14] See Transport Rate Structure and Pricing Order, supra.

[15] See Special Access Interconnection Order, supra.

[16] See Switched Expanded Interconnection Order, supra.

capital and physical barriers to sustaining a healthy competitive position vis-a-vis LECs. With the advent of such arrangements, LECs' access services will be available for competitors in piece-parts on an as-needed basis.

The ability of competitors to take advantage of such arrangements quickly and cost-effectively is certain. The facilities needed to supplant LECs' transport facilities can be provided cheaply and quickly. Fiber facilities are relatively inexpensive, whereas the major investments needed to provide services, for instance switching systems for switched access services, will continue to be provided by LECs. Interexchange carriers, in particular, will provide an ever-present and substantial competitive influence in the marketplace, regardless of whether they choose to leave the LECs' service immediately. Interexchange carriers already have in place extensive networks and presences in local exchange areas, and minimal capital outlay would be required in order for them to provide their own transport alternatives to LEC-provided transport services. Thus, interexchange carriers will always have the choice, which could be exercised with minimal delay and minimal capital outlay, to avoid the use of LECs' transport facilities, and readily supplant LECs' offerings. Indeed, interexchange carriers have already indicated interest in each of the 141 central offices which BellSouth has included in its special access expanded interconnection plans. In light of all of

the above, the Commission should recognize the impact of the availability of competitive alternatives on the access marketplace and should deem such alternatives to render LECs' special and switched transport services sufficiently competitive to qualify for streamlined tariffing requirements.

II. THE EFFECT OF TARIFF MODIFICATIONS ON LONG-TERM SERVICE ARRANGEMENTS

Several users filed comments addressing the impact of tariff filings upon long-term service arrangements. Under existing law, tariff provisions generally override contractual arrangements entered into outside of the tariff.[17] The commenting users are apparently concerned that if the Commission streamlines tariff filing requirements of non-dominant carriers, they will be at an increased risk of being subjected to tariff requirements which supercede prior long-term service arrangements. They suggest, variously, that the Commission should require carriers making filings which alter long-term contractual provisions to provide special notification to affected customers,[18] to flag such filings for the Commission,[19] to

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[17] Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 111 L.Ed.2d 94 (1990); Marco Supply Co. v. AT&T Communications, Inc., 875 F.2d 434, 436 (4th Cir. 1989).

[18] Capital Cities/ABC, Inc. and National Broadcasting Company, Inc. (the "Networks"), at 5.

[19] Networks at 5; Ad Hoc Telecommunications Users Committee ("Ad Hoc") at 11.

include special certifications in such filings,[20] and to file on extended notice periods.[21] The suggestion is also made that such filings should be subject to automatic suspension and investigation,[22] and that the Commission should clarify the standard which would be applied in

arrangement are considered to be material enough to fall within the more onerous tariff filing requirements proposed. For instance, where a LEC provides service under tariff for extended terms and rates established in the tariff, the terms and conditions established throughout the various sections of the tariff generally apply, including such wide-ranging matters as service descriptions, technical specifications, customer and carrier obligations, payment requirements, ordering provisions, and liability provisions. When tariff changes are made to such provisions, they can be major or minor. It would border on the ridiculous for the Commission to require flagging, special notification, or automatic suspension and investigation of all of such modifications as virtually all tariff filings would be included, and yet distinguishing between material and immaterial modifications would be difficult and attempts to do so would likely only lead to protracted litigation.

One commenter requests that the Commission address here the standards applicable in a complaint proceeding challenging tariff provisions which alter long-term service

[redacted][24]

III. RULES REGARDING CROSS-REFERENCING OF TARIFFS OF OTHER CARRIERS SHOULD BE MAINTAINED AS THEY PRESENTLY ARE.

Several commenters request the Commission to authorize carriers to meet its tariff filing obligation by cross-referencing another carrier's tariff.[25] One commenter suggests that carriers not be permitted to cross-reference rates of other carriers in a manner such that the rates of the cross-referencing carrier are established at a set amount or percentage below the cross-referenced carriers' rates.[26]

There is no need for the Commission to address this matter. The existing rules do not permit a carrier to cross-reference another carrier's tariff,[27] although waiver of such rule may be granted upon a showing of good cause,[28] and, indeed, waivers have been granted in some cases.[29] However, limited permission for such cross-referencing should be expected as the need for such should be uncommon. The Commission's streamlining requirements, as proposed, substantially limit the burdens which would be imposed upon a carrier to file a tariff. The filing can be in whatever

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[25] See, e.g., McCaw, Cellular Communications, Inc. at 5, LinkUSA at 5.

[26] Comments of Kenneth Robinson.

[27] 47 C.F.R. Section 61.74.

[28] 47 C.F.R. Section 1.3.

[29] For instance, BellSouth cross-references the NECA tariff for certain purposes.

form is desired and may contain virtually whatever information the carrier deems appropriate. Furthermore, a carrier which does not wish to file its own tariff can request to concur in another carrier's tariff.[30]

IV. RANGE OF RATES

Several commenters discuss the authority of the Commission to permit a carrier to file a range of rates rather than specific rates in its tariff filings.[31] It is BellSouth's belief that the Communications Act authorizes the Commission to adopt policies permitting carriers to file a range of rates in their tariffs as long as such policies are properly tailored and implemented to assure that the policies underlying the Communications Act are met. Indeed, as services become more and more competitive, there is a need for more flexibility in both service arrangements and pricing parameters. Most importantly, however, should the Commission adopt a range of rates policy, it should permit all carriers offering the services to which the policies apply to have the benefit of such policies and the resulting rules.

V. CONCLUSION

In summary, the Commission should apply its streamlined tariff filing requirements not based upon the dominant or non-dominant status of the particular carrier involved but

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[30] 47 C.F.R. Sections 61.131 through 61.136.

[31] See, e.g., AT&T, MCI, Sprint, CTIA.

rather based upon the competitive nature of the service offering involved. The LECs' special access and switched transport services should be considered competitive and qualified for streamlined tariffing treatment once expanded interconnection arrangements are available. Secondly, it is not necessary for the Commission to address concerns regarding the Filed Rate Doctrine or tariff cross-referencing in this proceeding. Finally, the Commission has the authority to adopt policies permitting carriers to file ranges of rate in their tariffs as long as such policies are properly tailored and implemented.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sheila Bonner, hereby certify that I have on this 19th day of April, 1993 serviced all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of same in the United States mail, postage prepaid, to those persons listed on the attached service list.

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